



FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

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The Committee solicits comment on the following proposal by July 1, 2016. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

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PROPOSED

The Committee proposes instructions for “human trafficking” violations under MCL 750.462a through 750.462f. The instructions, M Crim JI 36.1 through 36.6, are entirely new.

[NEW] M Crim JI 36.1 Obtaining a Person for Forced Labor or Services

(1) The defendant is charged with the crime of obtaining a person for forced labor or services. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant recruited, enticed, harbored, transported, provided or obtained [*name complainant*] to perform forced labor or services.

(3) Second, that when the defendant recruited, enticed, harbored, transported, provided or obtained [*name complainant*], defendant knew that it was for the purpose of having [*name complainant*] perform forced labor or services, whether or not such labor or service was actually provided.

(4) “Forced labor or services” are labor or services obtained or maintained by force, fraud, or coercion.

[Provide any or all of the following definitions, according to the evidence]

- (a) Force includes physical violence, restraint or confinement, or threats of physical violence, restraint, or confinement.
- (b) Fraud includes false or deceptive offers of employment or marriage.
- (c) Coercion includes threats of harm or restraint, or using a scheme intended to cause someone to think that psychological or physical harm or harm to the person’s reputation would result from failing to perform an act. It also includes abusing or threatening to abuse the legal system, such as threatening to have the person arrested or deported, and it includes

destroying, concealing, removing, or confiscating a passport or immigration document.

These are examples of [force / fraud / coercion] and not an exhaustive list.

[This crime is a 10-year offense that may be increased by aggravating factors. If the prosecution has charged one of those factors, the jury must be instructed under M Crim JI 36.5]

[NEW] M Crim JI 36.2 Holding a Person in Debt Bondage

(1) The defendant is charged with the crime of holding a person in debt bondage. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant recruited, enticed, harbored, transported, provided, or obtained [*name complainant*] to hold [him / her] in debt bondage.

(3) Second, that when the defendant recruited, enticed, harbored, transported, provided or obtained [*name complainant*], the defendant knew that it was for the purpose of holding [*name complainant*] in debt bondage.

(4) “Debt bondage” includes, but is not limited to, a promise by [*name complainant or person who had control over complainant*] that [*name complainant*] would perform services to pay back a debt where the value of the services, or the nature of the services and the time that they are to be performed, is not spelled out or defined, or the value of the services is not applied to reduction of the debt. This is not an exhaustive list of the types of debt bondage.¹

[This crime is a 10-year offense that may be increased by aggravating factors. If the prosecution has charged one of those factors, the jury must be instructed under M Crim JI 36.5]

Use Note

¹ *Debt bondage* is defined in MCL 750.462a(d).

[NEW] M Crim JI 36.3 Knowingly Subjecting a Person to Forced Labor or Debt Bondage

(1) The defendant is charged with the crime of knowingly subjecting a person to [forced labor or services / debt bondage]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant purposefully recruited, enticed, harbored, transported, provided, or obtained [*name complainant*] by any means.

(3) Second, that when the defendant recruited, enticed, harbored, transported, provided, or obtained [*name complainant*], the defendant knew that [*name complainant*] would be subjected to [perform forced labor or services / debt bondage].

[*Provide appropriate definitions*]

(4) “Forced labor or services” are labor or services obtained or maintained by force, fraud, or coercion.

[*Provide any or all of the following definitions, according to the evidence*]

- (a) Force includes physical violence, restraint, or confinement, or threats of physical violence, restraint, or confinement.
- (b) Fraud includes false or deceptive offers of employment or marriage.
- (c) Coercion includes threats of harm or restraint, or using a scheme intended to cause someone to think that psychological or physical harm or harm to the person’s reputation would result from failing to perform an act. It also includes abusing or threatening to abuse the legal system, such as threatening to have the person arrested or deported, and it includes destroying, concealing, removing, or confiscating a passport or immigration document.

These are examples of [force / fraud / coercion] and not an exhaustive list.

(5) “Debt bondage” includes, but is not limited to, a promise by [*name complainant or person who had control over complainant*] that [*name complainant*] would perform services to pay back a debt where the value of the services, or the nature of the services and the time that they are to be performed, is not spelled out or defined, or the value of the services is not applied to reduction of the debt. This is not an exhaustive list of the types of debt bondage.¹

[This crime is a 10-year offense that may be increased by aggravating factors. If the prosecution has charged one of those factors, the jury must be instructed under M Crim JI 36.5]

Use Note

¹ *Debt bondage* is defined in MCL 750.462a(d).

[NEW] M Crim JI 36.4 Participating in a Forced Labor, Debt Bondage or Commercial Sex Enterprise for Financial Gain

(1) The defendant is charged with the crime of participating in an enterprise involving forced labor, debt bondage, or commercial sex for financial gain. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant participated in an enterprise that engaged in forced labor or services, debt bondage, or commercial sexual activity by a person or persons less than 18 years old.

(3) Second, that the defendant knew that the enterprise was engaged in forced labor or services, debt bondage, or commercial sexual activity by a person or persons less than 18 years old.

(4) Third, that the defendant benefited financially or received anything of value from [his / her] participation in the enterprise.

(5) I will now define some of the legal terminology that was used in this instruction.

[Provide appropriate definitions]

- (a) An enterprise¹ is an organization for conducting business and can be an individual person, a sole proprietorship, a partnership, a corporation, a limited liability company, a trust, a union, an association, a governmental unit, any other legal entity, or any legal or illegal association of persons.
- (b) “Forced labor or services”² are labor or services obtained or maintained by force, fraud, or coercion.

[Provide any or all of the following definitions, according to the evidence]

- (i) Force includes physical violence, restraint, or confinement, or threats of physical violence, restraint, or confinement.
- (ii) Fraud includes false or deceptive offers of employment or marriage.
- (iii) Coercion includes threats of harm or restraint, or using a scheme intended to cause someone to think that psychological or physical harm or harm to the person’s reputation would result from failing to perform an act. It also includes abusing or threatening to abuse the legal system, such as threatening to have the person arrested or deported, and it includes destroying, concealing, removing, or confiscating a passport or immigration document.

These are examples of [force / fraud / coercion] and not an exhaustive list.

- (c) “Debt bondage” includes, but is not limited to, a promise by [name complainant or person who had control over complainant] that [name

complainant] would perform services to pay back a debt where the value of the services, or the nature of the services and the time that they are to be performed, is not spelled out or defined, or the value of the services is not applied to reduction of the debt. This is not an exhaustive list of the types of debt bondage.²

- (d) “Commercial sexual activity”³ means performing acts of sexual penetration or contact,⁴ child sexually abusive activity,⁵ or a sexually explicit performance.⁶

[This crime is a 10-year offense that may be increased by aggravating factors. If the prosecution has charged one of those factors, the jury must be instructed under M Crim JI 36.5]

Use Notes

¹ *Enterprise* is defined in MCL 750.159f(a).

² *Debt bondage* is defined in MCL 750.462a(d).

³ Definitions of *commercial sexual activity* are found in MCL 750.462a.

⁴ Definitions of *sexual penetration* and *sexual contact* are found in MCL 750.520a.

⁵ *Child sexually abusive activity* is defined in MCL 750.145c(1)(n) as a child engaging in a “listed sexual act.” *Listed sexual act* is defined in MCL 750.145c(1)(i) as “sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity.” Those terms, in turn, are each defined in MCL 750.145c(1), and the court may provide definitions where appropriate.

⁶ *Sexually explicit performance* is defined in MCL 722.673(g) as “a motion picture, video game, exhibition, show, representation, or other presentation that, in whole or in part, depicts nudity, sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse.”

[NEW] M Crim JI 36.5 Aggravating Factors

(1) If you find that the defendant is guilty of [obtaining a person for forced labor or services / holding a person in debt bondage / knowingly subjecting a person to forced labor or services or debt bondage / participating in an enterprise involving forced labor, debt bondage or commercial sex for financial gain], then you must decide whether the prosecutor has proved the following aggravating element[s] beyond a reasonable doubt:

[Select from the following. Proving a bodily injury under (4) below may be a lesser offense where serious bodily injury has been charged under (3).]

(2) That the violation involved

[Select one or more as warranted by the evidence]

- (a) kidnapping or attempted kidnapping of *[name complainant]*. Kidnapping means restraining someone for ransom, to use as a shield, to engage in criminal sexual conduct, to take out of the state, or to hold in involuntary servitude.
- (b) first-degree criminal sexual conduct or attempted first-degree criminal sexual conduct of *[name complainant]*. First-degree criminal sexual conduct is sexual penetration of a person [provide particular elements that may apply from M Crim JI 20.3 through 20.11].
- (c) an attempt to kill *[name complainant]*.
- (d) the death of *[name complainant]*.

(3) That the violation resulted in serious bodily injury to *[name complainant]*. A serious bodily injury is any physical injury that requires medical treatment. It does not matter whether *[name complainant]* tried to get medical treatment.

(4) [That the violation / You may also consider the less serious offense that the violation] resulted in bodily injury to *[name complainant]*. Bodily injury is any physical injury.

[NEW] M Crim JI 36.6 Using Minors for Commercial Sexual Activity or for Forced Labor or Services

(1) The defendant is charged with the crime of engaging a minor for [commercial sexual activity / forced labor or services]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

[Select (2) according to the charged conduct:]

(2) First, that the defendant recruited, enticed, harbored, transported, provided, or obtained *[name complainant]* for commercial sexual purposes. Commercial sexual activity¹ means performing acts of sexual penetration or contact,² child sexually abusive activity,³ or a sexually explicit performance.⁴

(2) First, that the defendant recruited, enticed, harbored, transported, provided, or obtained *[name complainant]* to perform forced labor or services. “Forced labor or services” are labor or services obtained or maintained by force, fraud, or coercion.

[Provide any or all of the following definitions, as applicable]

- (a) Force includes physical violence, restraint, or confinement, or threats of physical violence, restraint, or confinement.
- (b) Fraud includes false or deceptive offers of employment or marriage.

- (c) Coercion includes threats of harm or restraint, or using a scheme intended to cause someone to think that psychological or physical harm or harm to the person's reputation would result failing to perform an act. It also includes abusing or threatening to abuse the legal system such as threatening to have the person arrested or deported, and it includes destroying, concealing, removing, or confiscating a passport or immigration document.

These are examples of [force / fraud / coercion], and not an exclusive list.

(3) Second, that when the defendant recruited, enticed, harbored, transported, provided, or obtained [*name complainant*], [for commercial sexual purposes / to perform forced labor or services], [*name complainant*] was less than 18 years old, regardless of whether the defendant knew [he / she] was less than 18 years old.

(4) Third, that when the defendant recruited, enticed, harbored, transported, provided or obtained [*name complainant*], the defendant intended that [*name complainant*] would perform [commercial sexual activity / forced labor or services], whether or not [commercial sexual activity / forced labor or service] was actually provided.

Use Note

¹ *Commercial sexual activity* is defined in MCL 750.462a

² *Sexual penetration* and *sexual contact* are found in MCL 750.520a.

³ *Child sexually abusive activity* is defined in MCL 750.145c(1)(n) as a child engaging in a "listed sexual act." *Listed sexual act* is defined in MCL 750.145c(1)(i) as "sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity." Those terms, in turn, are each defined in MCL 750.145c(1), and the court may provide definitions where appropriate.

⁴ *Sexually explicit performance* is defined in MCL 722.673(g) as "a motion picture, video game, exhibition, show, representation, or other presentation that, in whole or in part, depicts nudity, sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse."